MONTANA LEGISLATIVE HISTORY

Chapter 209 1997

Bill H _____ S 120 Original bill & history X C

H. Committee on BUSINESS & LABOR

Hearing Date(s) 3/12 X C
& EXEC ACTION

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on LABOR & EMPLOYMENT

Hearing Date(s) 1/16 X C

EXEC. ACTION 1/23 X C

_____ C

_____ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

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SB 120 INTRODUCED BY MAHLUM *LC0617 DRAFTER: MCCLURE*

PROVIDE AN EXCEPTION FROM THE REQUIREMENT THAT AN EMPLOYEE WHO IS SEPARATED FOR CAUSE OR LAID OFF FROM EMPLOYMENT BE PAID ALL UNPAID WAGES IMMEDIATELY UPON SEPARATION IF A WAGE PAYMENT PROVISION IS PROVIDED FOR IN THE EMPLOYER'S WRITTEN PERSONNEL POLICY MANUAL

1/02	INTRODUCED		
1/03	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/06	FIRST READING		
1/16	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	50	0
1/28	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/29	FIRST READING		
1/29	REFERRED TO BUSINESS & LABOR		
3/12	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	91	6
3/26	3RD READING CONCURRED	96	3
	RETURNED TO SENATE		
4/02	SIGNED BY PRESIDENT		
4/03	SIGNED BY SPEAKER		
4/03	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 209		
	EFFECTIVE DATE: 10/01/97		

SB 121 INTRODUCED BY HERTEL *LC0696 DRAFTER: BOHYER*

ALLOW THE REVENUE FROM CERTAIN COUNTY LEASES TO BE DEPOSITED IN THE COUNTY GENERAL FUND

1/02	INTRODUCED		
1/03	REFERRED TO LOCAL GOVERNMENT		
1/03	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/09	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/16	HEARING		
1/17	COMMITTEE REPORT—BILL PASSED		
1/20	2ND READING PASSED AS AMENDED	49	0
1/21	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO LOCAL GOVERNMENT		
2/06	HEARING		
2/07	COMMITTEE REPORT—BILL CONCURRED		
3/05	2ND READING CONCURRED	92	7
3/06	3RD READING CONCURRED	91	9
	RETURNED TO SENATE		
3/10	SIGNED BY PRESIDENT		
3/12	SIGNED BY SPEAKER		
3/13	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 78		
	EFFECTIVE DATE: 07/01/97		

SB 122 INTRODUCED BY GAGE *LC0182 DRAFTER: MAR*

MAKE OPERATORS PERSONALLY LIABLE FOR THE PAYMENT OF OIL A NATURAL GAS PRODUCTION TAXES

BY REQUEST OF DEPARTMENT OF REVENUE

1/03	INTRODUCED
1/07	FIRST READING
1/07	REFERRED TO TAXATION
1/10	HEARING
1/28	TABLED IN COMMITTEE
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
	DIED IN COMMITTEE

SB 123 INTRODUCED BY HARGROVE *LC0769 DRAFTER: MCCL*

EXEMPT THE BOARD OF REGENTS FROM THE REQUIREMENT TO PA FEE FOR ISSUANCE OF REVENUE BONDS

BY REQUEST OF BOARD OF REGENTS

1/03	INTRODUCED
1/06	FISCAL NOTE REQUESTED
1/07	FIRST READING
1/07	REFERRED TO STATE ADMINISTRATION
1/13	FISCAL NOTE RECEIVED
1/14	FISCAL NOTE PRINTED
1/28	HEARING
1/28	TABLED IN COMMITTEE
3/03	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
	DIED IN COMMITTEE

SB 124 INTRODUCED BY CHRISTIAENS *LC0411 DRAFTER: HEFFELFIN*

REVISE THE LAWS ADMINISTERED BY THE PUBLIC EMPLOYI RETIREMENT BOARD

BY REQUEST OF PUBLIC EMPLOYEES' RETIREMENT BOARD

1/03	INTRODUCED		
1/07	FIRST READING		
1/07	REFERRED TO STATE ADMINISTRATION		
1/20	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED		
1/24	2ND READING PASSED	48	
1/25	3RD READING PASSED	45	
	TRANSMITTED TO HOUSE		
1/27	FIRST READING		
1/27	REFERRED TO STATE ADMINISTRATION		
2/07	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	86	
3/15	3RD READING CONCURRED	83	
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING AMENDMENTS CONCURRED	50	
3/20	3RD READING CONCURRED AS AMENDED	49	
3/25	SIGNED BY PRESIDENT		
3/26	SIGNED BY SPEAKER		
3/26	TRANSMITTED TO GOVERNOR		
4/02	RETURNED TO SENATE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/07	2ND READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	49	

SENATE BILL NO. 120

INTRODUCED BY MAHLUM

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXCEPTION FROM THE REQUIREMENT THAT AN EMPLOYEE WHO IS SEPARATED FOR CAUSE FROM EMPLOYMENT BE PAID ALL UNPAID WAGES IMMEDIATELY UPON SEPARATION IF A WAGE PAYMENT PROVISION IS PROVIDED FOR IN THE EMPLOYER'S WRITTEN PERSONNEL POLICY MANUAL; CLARIFYING THE PROVISIONS FOR PAYMENT OF UNPAID WAGES; AND AMENDING SECTION 39-3-205, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-205, MCA, is amended to read:

"**39-3-205. Payment of wages when employee separated from employment prior to payday -- ~~exception~~ exceptions.** (1) Except as provided in ~~subsections~~ subsection (2) ~~and (3)~~, when an employee is separated from the employ of any employer, all the unpaid wages of the employee are due and payable:

(a) within 3 days~~,~~ except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee. However, if an employer's payroll checks originate at an office outside the state, the time provided in this section for payment of wages must be extended for 3 additional days.

(b) immediately upon separation:

~~(2)~~ (i) ~~Except as provided in subsection (3),~~ if an employee is separated for cause from employment by the employer~~, all the unpaid wages of the employee are due and payable immediately upon the separation~~; or

(ii) unless payment of wages is provided for in an employer's written personnel policy manual.

~~(3)~~ (2) ~~If~~ The provisions of subsection (1) concerning payment of unpaid wages upon separation of employment do not apply to an employee who is separated from employment by the employer because the employee has committed the offense of theft of the employer's funds or property and criminal charges have been filed by the county attorney against the employee~~,~~. If an employee is separated from employment

pursuant to this subsection, the employer may apply to the district court for an order temporarily staying the payment of any unpaid wages due the employee and staying the running of the penalty provided for in 39-3-206 pending the final resolution of criminal proceedings against the employee. If the employee pleads or is found guilty of the criminal offense, the district court may order any wages due and owing to the employee by the employer to be offset against the amount that the employee illegally obtained from the employer. If the employee is found not guilty of the criminal offense, the district court may order the employer to pay the employee any wages due, including interest."

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on January 16, 1997, at 1:00 p.m., in Room 413/415.

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 120 & SB 98; 1/10/97
Executive Action: None.

{Tape: 1; Side: A; Approx. Time Count: 1:05 p.m.}

HEARING ON SB 120

Opening Statement By Sponsor:

SENATOR DALE MAHLUM, SD35, Missoula, introduces SB 120. The bill is simply designed to hold up payment of wages if the County Attorney has proof or belief that an employee has committed the crime of theft of funds or property from the employer. Instead of paying the subject employed within three days which is now in the legislation, we would like to have this time stated "until the resolution of the criminal proceedings against the employee is complete". If the employee is found innocent by the court, all wages due the employee plus interest shall be paid

immediately. This shall be stated in the Employee Policy Manual. An example of this is, let's say you have been missing $50 every week from a certain till in your store. After about eight weeks you decide to call in a specialist and they put a camera up. For two weeks you watch one employee take $50 out, put it in his pocket, and you have all this documented. Next you bring the Police Department in, call the employee in and the employee admits to doing this. He admits to doing this for a total of ten weeks, which adds up to a total of $500. What we want to do in SB120 is that if the employee has worked for eight days and receives $80 per day in wages, he has $640 coming from the employer. We would like to be able to hold that money owed him so that the $500 offset for the $640. This gives the employer an opportunity to get his money back. As far as employees are concerned, a majority of small business, which 90% in Montana are, the greatest asset they have in their firm is the employees. The only problem is that in every barrel of apples there is a rotten one.

{Tape: 1; Side: A; Approx. Time Count: 1:08 p.m.}

Proponents' Testimony:

David Owen, Montana State Chamber of Commerce, stated they support the intent of this bill enthusiastically and do it with the following observation. This whole process of employing people is becoming so complicated and we are going to deal with a lot of those issues. **Mr. Owen** has been managing Chambers for over 20 years and this issue is the biggest change he has seen in those years. People used to want and look forward to having more employees and brag about the growth of their business. Now they like the people who work for them but this idea of employing people has become very difficult. You have someone that you know took money from you but you have to give them more money in hopes that the judicial system with be able to return it to you. The courts state that people are innocent until proven guilty, but it seems to fit the concept that we do post bail, we do some things to hold people's attention during process and if this can fit that concept, especially when people have admitted this. If there is any way to make sure this loss is not compounded by giving them more things, **SENATOR MAHLUM** has done us all a favor.

Riley Johnson, National Federation of Independent Businessmen (NFIB), said they, too, stand in support of **SENATOR MAHLUM'S** proposal and he felt **Mr. Owen** is absolutely correct. Our members are finding ways to not hire people because of the problems which are being created by Wage An Hour processes being forced upon us and paperwork, so we would like you to take very serious consideration on this bill and we believe it is fair.

Chuck Hunter, Department of Labor and Industry, stated they have been working with **SENATOR MAHLUM** the past couple of days on the language that would help the Department with some problems in the Wage Payment Act. He believes with some amendments to this bill

we could solve some problems for both employers and the Department. We have a different standard for payment of wages upon discharge for public sector employers and private sector employers. That has been the cause of some concern, particularly in the private sector who have had a shorter time-frame. We propose an amendment to this bill that would be stated in line 16 of the bill which would begin on the first sentence. This would state, "within three days, except for the employees of the State of Montana and its political subdivisions who would be paid", through the word paid which would conform the time-frame for both public and private sector to the same regular pay day or 15 day time-frame. Secondly, we would propose an amendment on line 19 and 20, eliminating that sentence. On line 23, we would propose adding the term 'laid-off' after the term 'separated for cause' because at this time there is no provision for people who are terminated due to lay-off. This would put the language in such a way that people who were separated for cause or for lay-off could go under the employers' policy regarding those separations. **Mr. Hunter** also said in lines 26 through 30, they would like to include a more specific time-frame for payment following separations for cause.

Opponents: None

Questions From Committee Members And Responses:

SENATOR SUE BARTLETT asked **SENATOR MAHLUM** in regard to the changes which would come in the last part of the bill, what his intent is in terms of putting in the wording "unless payment of wages is provided for an employer's written personnel policy manual". **SENATOR MAHLUM** responded that a majority of small businesses have an employee personnel manual. He said when he hired an new employee they would come to work at 9:00 in the morning. That employee was given a manual and sent to the break room to read the manual, at this time he was being paid. Then he would sign a slip stating he read the manual. The manual told them several things, including what happens if dishonesty had to be addressed. We didn't used to have to do that, but now we do. **SENATOR BARTLETT** asked **SENATOR MAHLUM** what the provisions were in the manual for the final paycheck which was owed someone when they were separated from employment. **SENATOR MAHLUM** responded the manual he had was updated by an attorney and he did have a provision in the manual which really did not do much good because of the existing law. It was a provision which stated we could recover losses through wages. **SENATOR BARTLETT** then asked **SENATOR MAHLUM** that regarding the provision for going under the employer's written personnel policy manual would apply whenever someone separated from their employment, not simply when they are separated because of theft. What were the provisions if someone were laid-off? **SENATOR MAHLUM** responded that he brought the employee into an office and explained to them why they're being laid-off and gave them a written piece of paper regarding that. **SENATOR BARTLETT** asked **SENATOR MAHLUM** what the provisions for receiving their final paycheck under those circumstances were.

SENATOR MAHLUM stated they would be paid when the pay period is up, if they were paid bi-weekly they would be paid at the end of two weeks. Also notice was given them two weeks in advance.

SENATOR CASEY EMERSON asked **SENATOR MAHLUM** if he and **Mr. Hunter** are in agreement about the things **Mr. Hunter** mentioned. **SENATOR EMERSON** responded they are in agreement.

SENATOR BILL WILSON asked **SENATOR MAHLUM** on page 1, line 27 through 30 it states, "an employee who is separated from employment by the employer because the employee has committed the offense of theft of the employer's funds or property and criminal charges have been filed by the County Attorney against the employee". He stated both **Mr. Owen** and **SENATOR MAHLUM** mentioned the employee admitted that he had done something wrong. Where is the provision for due process, shouldn't this person be convicted? **SENATOR MAHLUM** responded what usually happens is the employee has proof before he accuses the employer. If you don't, he will sue you and he could own your business, so you are really careful about that. So with proof in hand, your officials go to your employee and they bring him in and talk to him. In nine times out of ten when the proof is right there, the employee will admit to doing this. They will sign it right there and they will want to just get out of there. **SENATOR WILSON** asked if he were that employee and worked under a collective bargaining agreement and went through a formal investigation process, what would happen if he said he didn't do it? **SENATOR MAHLUM** answered that then we would go through the process.

SENATOR DEBBIE SHEA asked **SENATOR MAHLUM** what happened to the wages in the meantime. **SENATOR MAHLUM** answered they are still in that entrepreneur's business fund. That is something that could probably be put into an escrow account or something like that. The employer does not have a problem with that at all. It is that he would like to get some of that money back. **SENATOR SHEA** responded what she is concerned about what would happen if this money was in escrow until such time this was settled, and could this go over a long period of time with the employer being without his pay? She does understand that it would be paid back with interest. **SENATOR MAHLUM** said that it is a good idea to put this into an escrow account because it also protects the employee. We could do this with a County Attorney and just put the money into the employee's escrow account.

CHAIRMAN TOM KEATING stated that **SENATOR MAHLUM'S** bill is changing existing language for the most part and some of what was asked is already in statute, it is just being modified. He is pointing this out to those who are unfamiliar with reading legislation.

<u>Closing Statement By Sponsor</u>:

SENATOR MAHLUM closed with the statement that this bill is not meant to harm an employee, if the employee can prove he has not

done anything wrong, he does get his wages plus an interest back on it. I believe this is a good bill for small businesses in Montana.

HEARING ON SB 98

Opening Statement By Sponsor:

SENATOR FRED THOMAS, SD 31, Stevensville, brought before the Committee SB 98. The Montana university system, one of those entities being the University of Montana, working on areas of administrative costs and trying to streamline to save money has set up several things. One being a one-stop shopping center for student enrollment process to streamline and save money. This is the capability of transferring student loans electronically. This helps to make the university system a better system, one which is consumer-oriented, and one which takes less money from students' pockets, out of the General Fund, etc. That process cannot be completed without the authorization from the legislators and governors. SB 98 helps them streamline that process in looking at administrative costs and functions. In this case it is one area with potentially great savings. In the bill, it deals with Workers' Compensation and current law indicates the university system must purchase their Workers' Compensation coverage from the State Fund. The bill states Workers' Compensation can be bought from anyone of the three plans, 1, 2, or 3. It does not say you cannot buy it from the Fund but states you have the option to buy it from one of the other plans, 1 or 2 as well. It is not a privatization bill nor is it protectionism as we would be called upon to do later.

SENATOR THOMAS referred to the fiscal note. He pointed out the savings of approximately $350,000 in fiscal year 1999. This is with the assumption that nothing would get going the coming year, but would take affect in 1999 as a potentially good savings. That may come from the negotiated savings from the State Fund or possibly from a private insurance entity. Potentially the savings could come either way. **SENATOR THOMAS** points out that this bill can directly impact student's tuition. We are asking the students in Montana and elsewhere to pay more and more and it seems only right to allow the consideration of cost reduction wherever that is possible and appropriate and **SENATOR THOMAS** feels that it is in this case. The savings goes to the taxpayers of Montana. Another element **SENATOR THOMAS** points out here that this bill will make a reality is the element of creating a focus on safety and prevention vs. handcuffing the university system to the State Fund. If SB 98 passes, this could happen whether Plan 1, 2 or 3 is selected, meaning the self-insured, private, or the State Fund. With the ability to choose on your own, versus going to the State Fund, which would be the only work-place you can buy your coverage. With state law, you have eliminated your ability to save money, you save money by eliminating and reducing claims and accidents; therefore, you are safety conscience. When you can talk to Plan 1, 2 or 3 as options and develop one of those to

SB120 & SB398

MONTANA SENATE
1997 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 1-16-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
CASEY EMERSON	✓		
DALE MAHLUM	✓		
DEBBIE SHEA	✓		
FRED THOMAS	✓		
BILL WILSON	✓		
JIM BURNETT, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

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CS-09

DATE 1-16-97

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 120 & SB 98

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
CARL SWANSON	STATE FUND	98		✓
CRAIG RALOFF	MSU-BZN	98	✓	
KATHY CREGO	UM-MSLA	98	✓	
George D Wood	MT. Self Insurers Assn	98	✓	
Jacqueline Lenmark	Am. Ins. Assn	98	—	
Rob Sandsted	Montana University System	98	✓	
Mick Robinson	Governor's Office	98		✓
Talen Johnson	NFIB	98	✓	
David Ocheal	MT Chamber	98		✓
David Ochsa	MT Chamber	120	✓	
Jeremy Fitz	Montana Associated of MT State University	98	✓	
Michael Bentley	AFSCME	98		✓
George Hagerman	AFSCME	98		✓
Michael Bentley	AFSCME	120	✓	✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 1-16-97

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: SB 120 + SB 98

_____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
George Hagerman	AFSCME	120	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **SENATOR DALE MAHLUM**, who served as Chairman in place of **SENATOR TOM KEATING**, on January 23, 1997, at 1:00 P.M., in 413/415

ROLL CALL

Members Present:

Sen. Dale Mahlum, Served As Chairman (R)
Sen. Thomas F. Keating, (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 185; 1/20/97
Executive Action: SB 62 Do Pass As Amended, SB 120 Do Pass As Amended

HEARING ON SB185

Sponsor: **SENATOR J.D. LYNCH, SD 19, Butte**

Proponents: **Don Judge, Montana State AFL, CIO**
Lorna Frank-Karn, Montana Farm Bureau

Opponents: **Nancy Butler, State Fund**

Discussion: **SEN. KEATING** asked **SEN. BARTLETT** to propose her amendment to SB 62.

Motion: **SEN. BARTLETT** moved that the amendment identified as requested by **SEN. BARTLETT**, page 5, line 12. This is the section which speaks to a situation in which an insurer believes a worker is unreasonably refusing to cooperate with the rehabilitation plan. The insurer may terminate the benefits and it requires a 14-day notice to terminate those benefits. This amendment requires this notice be written to both the worker and the Department. **(EXHIBIT 4)**

Discussion: **SEN. BENEDICT** fully supported **SEN. BARTLETT'S** amendment, the reason being it is a good business decision for both the insured and the insurer to make sure the terms of any agreement are in writing and it seems like the language is a little bit vague and will allow the insurer to notify an insured by phone, or other means of communication which could not be proven. **SEN. EMERSON** also supports this.

Vote: **AMENDMENT (EXHIBIT 4) CARRIED UNANIMOUSLY** on a voice vote. The **MOTION SB 62 DO PASS AS AMENDED CARRIED UNANIMOUSLY. (EXHIBIT 5)**

{Tape: 1; Side: B; Approx. Time Count: 1:46 P.M.}

EXECUTIVE ACTION ON SB 120

Amendments: **SEN. DALE MAHLUM** proposed amendments to SB 120. **(EXHIBIT 6)** He stated this bill was re-written to make it easier to read. **SEN. MAHLUM** asked **Chuck Hunter** to explain this. **Mr. Hunter** said they took the language of the bill which tried to clarify when wages were due on certain situations such as theft or terminations. They tried to take that language and conform public and private sector termination pay to be the same. They tried to clarify when wages were due based upon when the employee leaves, when the employee is terminated for cause, and when the employee is terminated for theft. Each of those sections is separate now and reads separately. The payment dates would be the same for both public sector and private sector under all those conditions. They hope the language flows a lot better than the original statutes.

SEN. MAHLUM stated the employee has no problem, he still gets paid if misappropriated funds which belong to the employer are found, and that money can be set aside. When the judge finds the employee has agreed in writing the withholdings are taken out. This does not happen too often. As a matter of fact, employee misappropriation of funds is about 3 or 4% of employees in the retail business. In the U.S. 60% of all misappropriation of funds or stolen funds are done internally while 40% are done externally by shoplifting. It is a national statistic and we are trying to make sure the person who does misappropriate funds, the

employer has a chance to get some of this money back from them. He calls this his "bad apple" bill because there is sometimes a bad apple in the barrel. He has had it happen many times.

CHAIRMAN KEATING asked if there was sufficient change in this to have another public hearing. **SEN. MAHLUM** said he does not think so.

SEN. DEBBIE SHEA asked **SEN. MAHLUM** if the concerns for the employee were satisfied in this amendment, if he doesn't turn out to be the "bad apple" you thought he was. **SEN. MAHLUM** responded, yes, it states, "if the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest". **SEN. SHEA** asked if the words "may order", should read "shall order". It was discussed by **Eddye McClure** and decided that it is permissive now, and it is the current language. **SEN. SHEA** asked if it was discussed what they would do with those wages in the meantime. **SEN. MAHLUM** responded they did talk about that, and what they decided was instead of going to the County Attorney and letting them have the $400 to $600, after taxes were paid, the employer will have the money to pay. This is not a bill which has anything to do with trying to not pay an employee. The money will be held with the employer. **SEN. SHEA** stated that obviously there is a "bad apple" in the group of employers as well so that is her concern. **SEN. MAHLUM** responded the majority of the local businesses in Montana are pretty good, they are small business and he does not have a problem with that. **SEN. BENEDICT** said he believes our laws have a lot of dealings with the employer if he is wrong in this case, as well as the employee wronging the employer. The laws are on the books but they are not filled. He said he was in this position last year and it is a difficult thing to say, "here's your check, and you owe me all that plus another several thousand dollars". If I do not give that check out, I could be in deep trouble and that would be taken up by the county.

Motion: **SEN. MAHLUM MOVED SB 120 DO PASS. HE ALSO MOVED A DO PASS ON THE AMENDMENT (EXHIBIT 6).**

Discussion: **CHAIRMAN KEATING** asked for further discussion or comments on the amendment. **SEN. BENEDICT** said he felt the amendment makes a much better bill and tightens things up a lot. He believes the employee protections are covered in the last two sections of the amendment.

SEN. THOMAS stated that the (i) section of the amendment wipes the whole thing out. This has no affect. Charges will not be filed within 15 days for $400. They won't be filed in 15 months. He realizes the intent is there, but was this discussed a lot?

SEN. MAHLUM responded they did. As a matter of fact, the case he had was done within 24 hrs. and there was no problem at all with

it. **SEN. THOMAS** asked if he filed the charges. **SEN. MAHLUM** answered he did.

SEN. THOMAS stated in this language, it says there needs to be filing in court and from his understanding of the situation he went through, he did not do that nor did he understand he could, that had to be done through the County Attorney. He said he made a complaint of sorts which falls into this arena because it was following a signed confession, but there have been no charges brought. It was foreign to him to go that, he found out he can not prosecute. **SEN. BENEDICT** said there is the possibility of going to small claims court himself, and if it is a court of jurisdiction also and then anything above $1,500 the County Attorney will respond to.

SEN. THOMAS asked if this isn't a criminal incident, you cannot file that in small claims court. **SEN. BENEDICT** answered he did not know why you couldn't, you are not asking for criminal charges but asking for restitution from the employee. This is not about charging someone with theft so he will get thrown in jail.

CHAIRMAN KEATING said they are talking about only one paycheck. **SEN. THOMAS** said he understands that, but wants to know what the court of competent jurisdiction is. He doesn't believe it is small claims. **Eddye McClure** said when they did separation for pay before, she is not sure where they filed. **SEN. THOMAS** said he would register his thoughts on this.

CHAIRMAN KEATING suggested to **SEN. THOMAS** if he determined that the phrase "if no charges are filed in a court of competent jurisdiction" does negate the balance of the intent here, and you find that out, you may want to amend it on the floor. If it turns out that small claims court is court of competent jurisdiction, then that will handle the matter because an employer would not have a problem, it does not require an officer or a county attorney to file in small claims. An employer himself can file. **SEN. THOMAS** responded following that sentence of competent jurisdiction against an employee within 15 days of the filing of the report with the local law enforcement agency, drawing the line between those two things, we are still in the criminal world. He is really not sure so he will look into it. **SEN. SHEA** asked **SEN. THOMAS** if it says right in the law that they have to file within that time period, does he think the County Attorney would not do that? **SEN. THOMAS** said they just don't do it, they have a hundred other things which are apparently more important. He asked **SEN. MAHLUM** when he said filing, did he mean that he made it to the police and or did he make a filing in small claims court. **SEN. MAHLUM** responded the police were with the agency that found out the problem. The employee admitted he did this, so the testimony was written down and signed. **SEN. MAHLUM** took it right to the County Attorney's office and one of those Deputy County Attorneys took it right away. **SEN. THOMAS** asked if they did it. **SEN. MAHLUM** said that is right.

Vote: The **MOTION** to add this amendment **(EXHIBIT 6)** to SB 120 was unanimously carried by the Committee by voice vote.

Discussion: **SEN. KEATING** asked for discussion regarding the motion that SB 120 is a do pass as amended.

Vote: The **MOTION SB 120 DO PASS AS AMENDED CARRIED UNANIMOUSLY BY VOICE VOTE.**

EXHIBIT 6
DATE 1-23-97
BILL NO. SB 120

Amendments to Senate Bill No. 120
First Reading Copy

Requested by Senator Mahlum
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
January 22, 1997

1. Title, line 5.
Following: "CAUSE"
Insert: "OR LAID OFF"

2. Page 1, line 14 through page 2, line 7.
Following: (1)
Strike: remainder of line 14 through "interest." on page 2, line 7.
Insert: "When an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.

(2) Except as provided in subsection (3), when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or to within 15 days from the separation, whichever occurs first.

(3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:

(a) the employee agrees in writing to the withholding; or

(b) the employer files a report of the theft with the local law enforcement agency within 7 days of the separation from employment, subject to the following conditions:

(i) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within 15 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 15-day period.

(ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest."

SENATE STANDING COMMITTEE REPORT

January 24, 1997

MR. PRESIDENT:
We, your committee on Labor and Employment Relations having had under consideration SB 120 (first reading copy -- white), respectfully report that SB 120 be amended as follows and as so amended do pass.

Signed: Thomas F. Keating
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 5.
Following: "CAUSE"
Insert: "OR LAID OFF"

2. Page 1, line 14 through page 2, line 7.
Following: (1)
Strike: remainder of line 14 through "interest." on page 2, line 7.
Insert: "When an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.

(2) Except as provided in subsection (3), when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or to within 15 days from the separation, whichever occurs first.

(3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:

(a) the employee agrees in writing to the withholding; or

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(i) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within 15 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 15-day period.

(ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest."

-END-

SB 185

MONTANA SENATE
1997 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 1-23-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
CASEY EMERSON	✓		
DALE MAHLUM	✓		
DEBBIE SHEA	✓		
FRED THOMAS	✓		
BILL WILSON	✓		
JIM BURNETT, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 12, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 120; SB 112; SB 229; SB 245; SB 226 (2/25/97)

Executive Action: SB 120; SB 226; SB 245; SB 229; HB 504; HB 249; HB 512; SB 88; SB 112; SB 233; SB 45

Roger McGlenn, IIAM
{Tape: 2; Side: 1; Approx. Time Count: .8; Comments: None.}

Riley Johnson, Viaticus, Inc.
{Tape: 2; Side: 1; Approx. Time Count: 1.3; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:
{Tape: 2; Side: 1; Approx. Time Count: 2.5; Comments: None.}

Closing by Sponsor: **Sen. Van Valkenburg** closed. **Rep. Pavlovich** to carry. **EXHIBIT 3.**
{Tape: 2; Side: 1; Approx. Time Count: 27.8; Comments: None.}

HEARING ON SB 120

Opening Statement by Sponsor: **Sen. Mahlum,** S. D. 35 introduced the bill.
{Tape: 2; Side: 2; Approx. Time Count: 1.6; Comments: None.}

Proponents' Testimony:
Riley Johnson, National Federation of Independent Businessmen
{Tape: 2; Side: 2; Approx. Time Count: 5.3; Comments: None.}

Charles Brooks, Billings Chamber of Commerce
{Tape: 2; Side: 2; Approx. Time Count: 5.9; Comments: None.}

Chris Gallus, MT Chamber of Commerce
{Tape: 2; Side: 2; Approx. Time Count: 6.7; Comments: None.}

John Andrew, Dept of Labor and Industry
{Tape: 2; Side: 2; Approx. Time Count: 7.0; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:
{Tape: 2; Side: 2; Approx. Time Count: 7.4; Comments: None.}

Closing by Sponsor: **Sen. Mahlum** closed. **Rep. Sliter** to carry.
{Tape: 2; Side: 2; Approx. Time Count: 11.1; Comments: None.}

EXECUTIVE ACTION ON SB 120

Motion/Vote: **Rep. Sliter** moved do concur SB 120. Motion carried unanimously.
{Tape: 2; Side: 2; Approx. Time Count: 13.1; Comments: None.}

HOUSE STANDING COMMITTEE REPORT

March 12, 1997

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 120** (third reading copy -- blue) **be concurred in**.

Signed: _____
Bruce Simon, Chair

Carried by: Rep. Sliter

Committee Vote:
Yes 18, No 0.

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

_____ SUBCOMMITTEE DATE 3/12

DEPARTMENT(S) _____ DIVISION House Bills

PLEASE PRINT **PLEASE PRINT**

NAME	REPRESENTING	
Roger McGlenn	IIAM	SB-245 SUPPORT
Kathy McGowan	McMHC	SUPPORT SB 229
Riley Johnson	Viaticus, INC.	SB 112 SUPPORT Amended
Verne Bertelsen	M S & H	SB 112 Support
Dorothea Bertelsen	Self	SB 112 Support
Dan Andrus	DPHHS	Support SB 229
Tom Hopgood	ACLI	SB 245 Supp
Chris Gagnus	MTC Chamber	SB 120 Support
Gloria Hermanson	MT Psych Assoc	SB 229 Info
Mary McCue	MCMHCA	SB 229 Info
Deborah Good	MALU	SB 112 proposed SB 226 prop
Roger McGlenn	IIAM	SB-112 Support
Frank Cote	St. Andrew	SB 112 SB 245 Support SB 226
Charles C. Brook	MT. Hospital Association	SB 120 Support
John Andrew	DOL	SB 120

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/12/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		